

## **REMARKS**

In the office action of January 10, 2006, the Examiner allowed claims 45 through 47, but rejected the remaining claims. The Examiner required evidence that the invention was conceived of prior to the filing date of the Nacouzi patent.

Applicant has provided a declaration by Randall Bateman, who has been Applicant's counsel through the prosecution of the present application and the parent utility application upon which priority is based for the present application. Provided with the declaration are copies of correspondence between the inventors and Mr. Bateman. The correspondence shows that the complete invention was disclosed to Mr. Bateman in late April, 2000, well before the filing of the Nacouzi patent. The correspondence shows that the Utility patent application which was filed and upon which priority is based in the present application was completed and sent to the client for review prior to the filing date of the Nacouzi patent. The declaration states that the only grammatical type changes were made prior to the filing of the application.

Thus, the declaration and accompanying evidence shows that the invention was not only conceived of, but the utility patent application was prepared for the invention prior to the filing of the Nacouzi patent.

In further discussing the development of the product with the inventors, counsel was made aware of prior use of a conventional mug warmer to heat candles. In the initial disclosure by the inventors, a "first sale" issue in December, 1999 was raised. Counsel had initially discussed this issue with the inventors and it was determined that the usage was a confidential usage of a mug warmer to heat candles formed in glass containers and not a "sale". However, recent discussions with other inventors regarding the conception of the invention revealed that there were non-

confidential disclosures/usage of a conventional mug warmer to heat a candle formed in a glass container well in excess of one year prior to the filing date of the parent application.

Therefore, the use of a conventional mug warmer to heat a candle should be considered as prior art. Accordingly, claims directed towards the method or apparatus of using a candle warmer which would read on a conventional mug warmer have been removed from the application. Applicant notes that there was no usage of a candle warmer having an ornamental retaining ring or a light as is now claimed. It is therefore believed that the claims as contained in this amendment do not present any issues regarding an “on sale bar”.

Counsel believes that the attached declaration and evidence removes Nacouzi as a prior art reference, as it shows transmission of the completed invention to patent counsel and preparation of the utility patent application prior to the filing of the Nacouzi patent. As Nacouzi has been removed as a reference, and in light of the amendment to the claims, Applicant believes that the claims are now in condition for allowance.

Applicant further submits that the combination of various pieces of the prior art to further reject the claims is contrary to the teachings of the references. Andeweg teaches the placement of a light inside of a candle to thereby illuminate the candle. The candle is a conventional wax candle. If the candle was placed on a heating surface to thereby melt the candle the light cavity would be ruined and a mess of wax and electrical components would result. Similarly, Tang teaches replacing the candle wick with electrical wires and disposing a light bulb at the top of the candle to simulate a flame. If the candle of Tang was placed on a heater, the candle would collapse or melt and create a mess of wax and wire. For both Andeweg and Tang, heating the candle on a candle heater would defeat the purpose of the invention disclosed therein. One of ordinary skill in the art would certainly appreciate that use of Andeweg or Tang in such a manner would be both unwise

and potentially dangerous. Further more, it goes against the implied teaching in each reference or preserving the candle while simulating burning.

The claim elements of claims 37 and 41 have been amended into claim 36, and as such the change presents no new matter. Claim 36 now requires melting the wax and illuminating the wax, which is not taught by the prior art. Even if Nacouzi remains as a prior art reference, the cited prior art does not teach selecting a candle with a container, lacing the candle on top of a planar heating surface, melting the candle, and illuminating the candle wax.

Regarding the teachings of Andeweg, Figure 8 does show a sheath 63. Andeweg, however, teaches that “The sheath of non-flammable material 63 prevents the wick 64 from burning down into the internal cavity 62.” (column 3 lines 32-34). Thus, the sheath is for preventing the wick from burning into the cavity when the candle is burned conventionally, preserving the ornamental candle with electric light bulb. It is easily appreciated that the sheath will not prevent destruction of the candle if the candle is placed on a heating surface to melt the candle. The sheath does not protect the bottom of the candle, and melting the candle would destroy Andeweg’s lighted ornamental candle. The sheath provides no protection to melting the candle from below. It is clear that melting the portion of Andeweg’s candle having the electric wires and light is contrary to the teachings of Andeweg.

Further, Andeweg teaches a conventional candle lighted from within. Andeweg does not teach a candle formed in a glass container. Melting the Andeweg candle on a planer heating element would be both messy and unsafe as melted wax would flow off of the heating surface and possible into the electrical components of the heating device. There is no motivation to form the Andeweg candle in a container, as a container would interfere with the aesthetic effects of the Andeweg candle, and the aesthetic portion of the Andeweg candle is intended to remain unmelted.

Nacouzi does not teach melting a candle in a container on top of a heating surface. Nacouzi teaches using radiant heat from above a candle or aromatic member to warm and melt the top of the candle to release fragrance. Nacouzi does not teach a candle formed in a container, allowing a person to melt the entire candle, or allowing the candle to safely be melted from below.

Claims 45-47 have been allowed.

Claim 48 has been amended to include the limitations of previous claim 50. The prior art, even if Nacouzi is still considered as prior art, does not teach a candle heater with a planar heating element for heating a candle and a separate socket disposed in the center of the heating element for providing energy to a light. Nacouzi does not teach a separate heater and light. Nacouzi teaches *either* a heating surface *or* a heating light, and not both. Andeweg does not teach any candle heater as claimed, and certainly makes no teaching of a planar candle heater with a light socket disposed in the heater itself. Combining Andeweg with Nacouzi clearly does not produce a heater with a light socket in the middle as claimed. Further more, Andeweg teaches away from placing the candle of Andeweg on a heater to melt the candle, as such would destroy the candle, and thus teaches away from such a combination.

Claim 58 is patentable even if Nacouzi remains a reference. The claim requires a candle heater with a planar disk shaped heating element and a light for lighting a candle. As discussed Nacouzi does not teach both of these elements, and Andeweg does not provide the missing elements.

Claim 59 is independently patentable as it teaches emitting light through the candle wax. Such is not taught in the prior art. Andeweg teaches a candle with internal illumination, but which is not configured for melting to thereby more effectively emit fragrance, as melting the candle would ruin the candle. Thus, it is contrary to the teachings of Andeweg to melt the candle.

Claim 62 is independently patentable as it requires positioning a light below the candle. None of the cited prior art teaches placing a light below a candle.

Claim 66 has been amended to include the limitations of previous claim 70, which has been canceled. Even if Nacouzi remains a reference and Andeweg is combined, the prior art does not teach a candle heater having a planar heating element for heating a candle thereon, and having a light for illuminating the candle disposed at least partially below the surface of the heating element. Furthermore, Applicant has provided evidence that Applicant's invention predates the filing date of Nacouzi, and Andeweg teaches away from such a combination.

Claim 71 has been amended to include the limitations of previous claims 73 and 76, now canceled. The cited references do not teach such claim elements. Particularly, Andeweg teaches away from melting the candle as such would ruin the ornamental candle disclosed. The sheath keeps wax out of the light cavity if the candle is burned from above, as Andeweg discusses, but if the candle of Andeweg is placed on a heating surface and the candle is melted, the candle would be ruined and the molten wax would spread across the heater, being messy and dangerous. Andeweg teaches no container to enclose the candle, and the addition of such would change the decorative properties of the Andeweg candles. No teaching is made for such a change.

Claim 78 is patentable as Nacouzi has been removed as a reference. Additionally, the claim is patentable over the references. Nacouzi does not teach separate lighting and heating means. Andeweg does not teach lighting means disposed on the housing or heating means, but teaches an ornamental candle which is internally illuminated separate from any other device. There is no teaching to place the candle of Andeweg on the device of Nacouzi, and Andeweg does not teach any aromatic properties in the candle. Additionally, there is no teaching or motivation to remove the internal lighting from the Andeweg candle and install the lighting in the Nacouzi device, as the

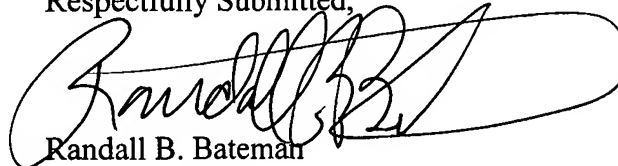
claim requires the lighting to be part of the warming device. Removal of the internal lighting devices from Andeweg is contrary to the teachings of Andeweg, as self-contained internal decorative illumination for a candle is the only purpose of the Andeweg patent.

Curiously, the identical language of claim 78 was determined to be patentable over the same prior art in U.S. 6,627,857, filed 2 years after Applicant's invention and issued over 2 years ago.

Applicant therefore believes that the application is in condition for allowance. It is believed that the present amendment does not raise any additional concerns requiring further search because the amendments only place limitations from dependent claims into independent claims, and because the combinations of limitations were previously presented in claims 58 and 78. Applicant believes that no fee is necessary with the above amendment. The Commissioner is hereby authorized to debit any amount owing or credit any overpayment to Deposit Account No. 50-2720.

Should the Examiner have any questions or concerns regarding the preceding amendment, it is requested that she contact Applicant's counsel, Randall B. Bateman, at (801) 533-0320.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Randall B. Bateman", enclosed within a large, loopy oval shape.

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